

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6370 of 2022

Applicant :- Mushtak Ahmad

Opposite Party :- State Of U.P. Through Principal Secretary Home Department, Government Of U.P., Lucknow

Counsel for Applicant :- Amit Kumar Awasthi, Anand Kumar Shukla, Dharm Trivedi, Mool Chandra, Shiv Pal Singh

Counsel for Opposite Party :- G.A., Sajeet Singh

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Dharm Trivedi, learned counsel for the accused/applicant, Shri Sajeet Singh, learned counsel appearing for complainant/ informant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Mushtak Ahmad** for grant of bail, in Case Crime No. 108/2022, under Sections 302, 307, 34 IPC, Police Station Nighasan, District Kheri, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The FIR of the instant case has been lodged by one Rahmat Jahan alleging therein that the deceased Masoom Ali has been done to death by the applicant and other co-accused persons and specific role of firing was assigned to one Raees and the role of assault with 'Banka' has been assigned to the rest of the co-accused persons named in the FIR. However, the informant was not the eye witness of the crime and she stated to have lodged the First Information Report, in her statement recorded under Section 161 Cr.P.C. , on the information provided by Qutbuddin and Aasarunnisa.

4. It is vehemently submitted that the FIR of the instant case is nothing but the bundle of lies as the statements of Qutbuddin and Aasarunnisa were recorded by the Investigating Officer, under Section 161 Cr.P.C. wherein they both have stated that at the relevant point of time they were not present at the spot and have not seen the incident.

5. It is further submitted that later on the statement of injured Moharram Ali was recorded by the Investigating Officer on 28.2.2022, wherein he has changed the whole prosecution story

and has assigned the role of firing to the co-accused- Muneer while the role of assault with 'Banka' and 'Baghauri' has been attributed to other co-accused persons.

6. It is further submitted that statement of this star witness of the crime, namely, Moharram Ali was recorded before the trial court and he has specifically stated in his statement, recorded before the trial court, that the applicant or other co-accused persons have not assaulted him and he got injuries in the stampede occurred after the incident.

7. It is vehemently submitted that the deceased was a dreaded criminal and was having many criminal cases pending against him and was also having a lot of persons as his enemies and it appears that he has been done to death by some other persons and only on account of previous enmity, the name of the applicant and other co-accused persons have been dragged into this case.

8. It is further submitted that when the star/ sole/ injured witness of this crime namely, Moharram Ali has not supported the version of the prosecution, it becomes a case of no evidence and by any stretch of imagination, the conviction of the applicant may not be possible.

9. It is also submitted that the applicant is in jail in this case since 25.02.2022 and he is not having any criminal antecedent and having regard to the pace with which the trial has travelled so far, it is not expected to conclude in near future. Charge sheet in this case has already been filed and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

10. Learned A.G.A. on the other hand opposes the prayer of bail of the applicant on the ground that the applicant is accused of committing an heinous offence and therefore he is not entitled to be released on bail.

11. Shri Sajeet Singh, learned counsel appearing for the complainant/ informant vehemently submits that the witness Moharram Ali appears to have been won over by the accused persons and the statements which has been given by him before the trial court may not be taken as truth by any stretch of imagination. Attention in this regard has been drawn towards the injuries sustained by Moharram Ali in the alleged incident and it is submitted in the background of these injuries, that these injuries may not be the result of stampede as many of these injuries are incised wounds and on vital parts of the

injured. However, he could not refute the submissions made on behalf of the applicant, that it was a case of sole eye witness and he has been declared hostile before the trial court.

12. Having heard learned counsel for the parties and having perused the record, it is reflected that the applicant's family as well as the deceased were having inimical relations with each other. The FIR of the incident was lodged by Rahmat Jahan. It appears to be an admitted situation that she was not the eye witness and she stated to have lodged the FIR on the information provided by Qutbuddin and Aasarunnisa, however, these two persons namely, Aasarunnisa and Qutbuddin have stated in clear terms that they have not witnessed the crime. On 28.02.2022, the statement of injured Moharram Ali was recorded who has assigned the role of firing to Muneer and the role of assaulting with Baghauri / Banka to other co-accused persons including the applicant. It also appears that during the course of investigation, two of the accused persons namely, Naseem and Muneer were arrested and on the disclosure statement given by them, a Tamancha / country made pistol as well as a Baghauri were covered on their pointing. Nothing incriminating is shown to have been recovered either from the possession or on the pointing of the applicant. It also appears to be an admitted situation that the sole witness of this crime, namely, Moharram Ali has been testified before the trial court as P.W.2 and he has not supported the version of prosecution. Significantly, the State has not chosen to exercise its discretion under Section 154 of the Indian Evidence Act and it appears that no request has been made by the public prosecutor appearing before the trial court to permit him to cross examine the star witness of the crime, Moharram Ali under Section 154 of Indian Evidence Act, this shows the irresponsible behaviour of the public prosecutor who at the relevant point of time was conducting the case before the trial court and the conduct of the public prosecutor in not making any request to the trial court under Section 154 of the Indian Evidence Act to impeach the star witness of the crime, namely, Moharram Ali, must raise many eyebrows, with regard to the fairness with which the public prosecutor was conducting prosecution before trial court.

13. This Court is of the considered opinion that fair trial is not possible unless and until all the stake holders appearing before the trial court, specially in the criminal matters perform their duties with due diligence, where sometimes the informant and aggrieved persons are having their last hope in the trial court and public prosecutors and if that hope and trust is not kept at higher pedestal by the public prosecutor appearing before the trial court, the fair trial in the considered opinion of this Court

is not possible.

14. Thus an appropriate action is required to be taken against the public prosecutor who at the relevant point of time was conducting the trial in this case before trial court, specifically on the day when the prosecution witness no.2, namely, Moharram Ali was testified before the trial court. This Court hopes and trust that a suitable action against the public prosecutor/ A.D.G.C., who was conducting the prosecution on the relevant day when the evidence of star witness of the crime namely, Moharram Ali was recorded, would be taken by L.R./ Principal Secretary, Law, in this regard.

15. Be that as it may, it is evident that the only eye/ injured witness of the crime Moharram Ali has not supported the version of the prosecution. The other witnesses who had appeared before the trial court or even those whose statements have been recorded by the investigating officer during the course of investigation have not claimed to have seen the incident. The applicant is in jail in this case since 25.02.2022 and he is not having any criminal antecedent. Charge sheet in this case has already been filed. His presence may be secured before the trial court by placing adequate conditions.

16. Keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

17. Let the applicant- **Mushtak Ahmad** involved in the aforesaid case be released on bail on furnishing a personal bond with two heavy sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

18. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

19. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

20. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

21. A copy of this order be sent to the Principal Secretary, Law to make in depth inquiry with regard to the conduct of prosecution by the A.D.G.C./ Public Prosecutor in this case especially in this requesting the trial court to declare star witness hostile with permission to cross examination, and to take further necessary action in the mater strictly in accordance with law.

Order Date :- 5.12.2023

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